

Docket No.: 1330.1047

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re the Application of:

Arnoud EKKER, et al.

Serial No. 09/353,625

Group Art Unit: 3692

Confirmation No. 3873

Filed: July 15, 1999

Examiner: Nga B. Nguyen

For: A REAL-TIME CHARGE CALCULATION SYSTEM

REPLY BRIEF

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer mailed April 20, 2007, having a reply due date of June 20, 2007, Applicants hereby submit this Reply Brief.

A Request for Oral Hearing is submitted herewith.

I. STATUS OF CLAIMS (37 CFR § 41.37(c)(1)(iii))

Claims 1-34 are currently pending. Claims 1-34 stand finally rejected and are appealed.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL (37 CFR §41.37(c)(1)(vi))

Claims 1-20, 23-29 and 31-33 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,377,938 (Block), claims 21 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Block in view of U.S. Patent No. 6,058,170 (Jagadish) and claims 30 and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Block.

III. ARGUMENT (37 CFR § 41.37(c)(1)(vii))

The present invention enables calculation of charges related to events as the events become available, rather than calculating the charges only when a billing initiation event occurs. As such, pricing and billing processes can be treated as distinct and independent activities.

The Examiner's Answer includes Grounds of Rejection in item (10) on pages 3-14 and Response to Arguments in item (11) on page 15 that appear to be identical to items 5-9 on pages 3-15 and pages 2 and 3 of the Office Action mailed October 6, 2006, respectively. The rejections addressed in detail in the Appeal Brief are incorporated in this Reply Brief. Following is the Appellant's reply to the comments in item (11) of the Examiner's Answer.

In item (11) of the Examiner's Answer, the Examiner asserts that Block at col. 7, line 55 through col. 8, line 6 teaches "pricing system-created non-usage events and non-system created events as they become available" and "independent of a billing process." This portion of Block specifically states:

"The Processor 60 calculates call charges in real time during a call, applying the duration of the call to the appropriate section of the tariff stored in the Tariff Memory 76. The call charges are then stored as a DUR in the DUR Memory 78. For a telephone call, the call charges are stored as a CDR which includes the called number, the call duration, the call charges, and any such other information as may be desired by the subscriber or the service provider.

The Business Management System 50 can notify the Processor 60 of payments made by the subscriber via the Data Port 55. The Processor 60 updates the subscriber's account with the payment amount. The Processor 60 also updates the subscriber's account with flat charges, e.g., monthly equipment rental fees, and subtracts these charges from the subscriber's balance. If the subscriber has not submitted a payment in a predetermined amount of time, the Business Management System 50 can instruct the Processor 60 to disable the subscriber's service."

(col. 7, line 55 through col. 8, line 6 of Block).

As can be seen from the above discussion, Block explicitly states that the processor "calculates call charges during a call, applying the duration of the call to the appropriate section of the tariff stored in the Tariff Memory" and "updates the subscriber's account [including] with flat charges", thereby determining charges (pricing) at the time of the call and applying the charges (billing) to the remaining balance of the pre-paid card. For the above-discussed reason, the Examiner has not established a priori case of anticipation. For this reason it is requested that the rejection be withdrawn.

In particular, Block is directed to a pre-paid telephone card with a specific balance, from which the cost of calls made and flat charges are deducted. Meaning, since the functionality of Block necessitates that the system determine whether the subscriber has a sufficient balance for a call (see, FIG. 2B), pricing is integral to (and not independent of) of billing (see, col. 8, lines 14-23).

Essentially, the Examiner is asserting that Block does not require that pricing be dependent on billing. Following the Examiner's interpretation of Block, a subscriber could make a call when there is no prepaid balance to cover the cost of the call if charges were not calculated and billed at the same time since Block is solely based on authorizing a call based on a subscriber's usable balance.

On page 15, the Examiner also appears to assert that Block provides an up-to-date balance of charges available to the user in real time, the user does not have to wait for the billing cycle to receive billing information, therefore, the real time billing calculation in Block is independent of a billing process. Applicants respectfully disagree because calculating the cost of the call and applying the cost to the remaining balance in Block at any other time but when the call is made would make the remaining balance driven system of Block useless. That is, the reference to real-time in Block only relates to giving a subscriber access to information concerning remaining usable balance at any time (see, col. 3, lines 8-11 and col. 5, lines 20-31).

As stated in the Specification of the present application, real time refers to "when the system processes events" (see, line 6 from the bottom on page 6). For example, as illustrated in Fig. 5 of the present application, the 5% discount for total charges between \$20 and \$50 is priced as the discount becomes available due to the \$12 recurring charge and the \$18 usage charge totaling over \$20 and below \$50.

Unlike the claimed continuous pricing independent of billing, Block only calculates and applies the cost of the call immediately and in response to initiation of a call by the subscriber

making or receiving the call, since calculation of the cost of the call made and billing the cost against the remaining balance are dependent on one another (see, col. 5, lines 20-31). Thus, charging events in Block are tied to customer call events.

Further, since Block does not specify when the fixed charges are billed, Block does not enable pricing recurring or fixed charges independent of the billing process. Instead, Block discusses balance calculations that are call event driven where the system checks to see if any fixed charges are pending (stored) and if so, calculating the charge and immediately billing against the balance (see, "tariff Memory 76" col. 6, lines 36-44).

Independent claims 1, 11, 19 and 25-32 recite pricing for "a system initiated and created non-usage event[s] independent of user initiated events" including "pricing the system-created non-usage events and/or the non-system-created events independent of a billing process" (claims 1, 25, 28 and 31). Independent claims 11, 19, 27, 29 and 32 further recite "pricing the non-usage events independent of a billing process" that includes the "user initiated events" (claims 27 and 32) and "a non-system-created event" (claim 11 and 19).

The invention of claims 14, 33 and 34 recites pricing "all available system initiated and created non-usage events independent of user initiated events for a current billing period", "real-time calculation of the bill each time an event independent of a user's initiation occurs" and "pricing for the non-usage event and the usage event based on determination of availability for pricing", respectively.

Block does not teach or suggest the claimed features as set forth in the independent claims. Therefore, since Block does not disclose the features recited in the independent claims, as stated above, it is respectfully submitted that the independent claims patentably distinguish over Block, and withdrawal of the §102(e) rejection is earnestly and respectfully solicited.

As previously discussed, the invention of claims 1, 11, 14, 19, 25-29, 33 and 34 patentably distinguishes over Block. Further, as Block merely discusses calculation of charges that is dependent on a billing event of a subscriber, Jagadish does not cure the deficiencies of Block regarding the claimed invention.

Per the Examiner's assertion, Block does not disclose system initiated and created events are created according to a schedule in the system which is created and maintained by the system based on subscription available to the system. However, the summary information in Jagadish is stored in a summary database that is updated in real-time as calls are placed (see, col. 3, lines 42-58).

According to Jagadish, a customer places calls from calling stations, which causes a corresponding automatic message accounting (AMA) record to be generated (see, FIG. 2 and corresponding text). Then, each AMA record is passed to a call detail for making the record available for call pricing at which point the system applies the customer specific billing to update the summary information stored in the summary database (see, column 3, lines 42-58).

Block and Jagadish that discuss billing triggered when initiated by calls do not teach or suggest the invention of claims 21 and 22 including, "system initiated and created events created according to a schedule in the system" where the schedule is "created and maintained by the system based on subscription information available in the system."

Starting on page 13 of the Examiner's Answer, the Examiner acknowledges that Block does not disclose storing one-time events and where the non-usage event is available for pricing at a first billing period and the usage event is available for pricing at a second billing period. However, the Examiner states that one-time events such as activation/cancellation fee, purchased equipment fee, and non-usage and usage events available at first and second billing periods are well known. Applicants respectfully traverse the Examiner's statement because supporting evidence with respect to the well known rejection have not been provided, and request that the Examiner produce authority for the statement.

The Applicants specifically point out the following errors in the Examiner's action.

First, the Examiner uses common knowledge ("well-known") evidence for the rejection. As explained in the M.P.E.P.,

any facts so noticed should... server only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground for rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based.

M.P.E.P. § 2144.03

Second, the noticed fact is not considered to be common knowledge or well-known in the art. In this case, the limitation is not of notorious character or capable of instant and unquestionable demonstration as being well-known. Instead, this limitation is unique to the present invention (see, M.P.E.P. § 2144.03(A) (the notice of facts beyond the record which may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute").

Third, there is no evidence supporting the Examiner's assertion (see, M.P.E.P. § 2144.03(B) ("there must be some form of evidence in the record to support an assertion of common knowledge").

Fourth, the Examiner appears to be basing the rejections, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such assertion with an affidavit when called for by the Applicant. The Examiner is called upon to support such assertion.

Further, even if the Examiner's assertion and rejection based on common knowledge is valid, the invention of claims 30 and 34 is distinguishable as discussed below.

The invention of claim 30 is directed to "storing events in a message queue, the events being system initiated and created non-usage events, usage events, one time events" and "pricing the events, the pricing including pricing the non-usage events independent of a billing process that includes the user initiated events."

Independent claim 34 recites, "pricing for the non-usage event and the usage event based on determination of availability for pricing."

As mentioned above, Block is limited to pricing costs of a call and applying the costs against the balance of the pre-paid card where billing is initiated at the subscriber's initiation of billing. Thus, Block does not teach or suggest "storing events in a message queue" including "system initiated and created non-usage events, usage events, one time events" and "pricing the non-usage events independent of a billing process" (claims 30) and "pricing of non-usage event and the usage event based on determination of availability for pricing"(claim 34).

On page 15 of the Examiner's Answer, the Examiner indicated that the non-usage event independent of user initiated events is defined in the Specification as recurring event 66 that are charges billed on a regular, recurring interval, and thus flat charges and monthly equipment rental fees are recurring events or non-usage events.

Applicants respectfully submit that the claimed non-usage event is not limited to any particular event. For example, as stated in the Specification as filed, system created events may include events such as recurring, minimum charge summary, maximum charge summary, tired and tapered summaries, etc., which are calculated continuously by the pricing process (see, page 3, paragraphs 6 and 8; page 8, last paragraph; page 18, paragraph 1; page 24, paragraph 1 of the Specification as filed).

In contrast to the claimed invention, according to the Block and Jagadish system, pricing is tied to billing and vice versa and both are tied to customer call events.

Block and Jagadish, alone or in combination, do not teach or suggest the above discussed features of the invention including "event pricing" for "a system initiated and created non-usage event[s] independent of user initiated events", as recited in claims 1, 11, 14, 19 and 25-32.

Similarly, Block and Jagadish, alone or in combination, do not teach or suggest the features of claims 33 and 34 including, "executing the real-time calculation of the bill each time an event independent of a user's initiation occurs" and "executing the pricing for the non-usage event and the usage event based on determination of availability for pricing", respectively.

Therefore, it is respectfully submitted that the claimed invention is patentably distinguishable over the cited references.

IV. CONCLUSION

For the reasons set forth above, it is submitted that the Examiner's Answer does not rebut the arguments presented in the Appeal Brief and during prosecution of the present application.

Therefore, it is respectfully submitted that the Examiner's final rejection of the claims is without support and erroneous. Accordingly, the Board of Patent Appeals and Interferences is respectfully urged to so find and to reverse the Examiner's final rejection.

If any additional fees are required in connection with the filing of this Reply Brief, please charge same to our Deposit Account No. 19-3935.

Respectfully submitted,

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V. CLAIMS APPENDIX (37 CFR § 41.37(c)(1)(viii))

1. (PREVIOUSLY PRESENTED) An event pricing system, comprising:
at least one computer having:
a continuously running event creation process determining whether a system initiated and created non-usage event independent of user initiated events is due to be created and creating the non-usage event; and
a continuously running pricing process pricing the system-created non-usage events and non-system-created events as they become available to the system, where the pricing process includes pricing the system-created non-usage events and/or the non-system-created events independent of a billing process.
2. (ORIGINAL) A system as recited in claim 1, wherein all events are priced as they become available to the system.
3. (ORIGINAL) A system as recited in claim 1, wherein all system-created events are created at any time based on a flexible schedule independent of a billing process.
4. (PREVIOUSLY PRESENTED) A system as recited in claim 3, wherein system initiated and created events for a customer may be created in one of less frequently than the customer is billed, as frequently as the customer is billed and more frequently than the customer is billed.
5. (ORIGINAL) A system as recited in claim 1, wherein summary events are created and maintained in real-time as events are priced.
6. (ORIGINAL) A system as recited in claim 1, wherein all events are available for contribution to summary records for discounting and consolidation.
7. (ORIGINAL) A system as recited in claim 1, wherein charges for all events that are relevant to a billing period are calculated and available in the system at the earliest practical time.

8. (ORIGINAL) A system as recited in claim 1, wherein processing for calculating charges to be billed in a current billing period is outside the billing process.

9. (ORIGINAL) A system as recited in claim 1, wherein charges for all unbilled events are ready for the billing process and ready for display on-demand.

10. (ORIGINAL) A system as recited in claim 1, wherein said pricing process performs real-time recalculation of a charge for any unbilled event when information in the system which impact the charge has changed.

11. (PREVIOUSLY PRESENTED) A computer implemented event pricing process, comprising:

determining, by a computer, whether a system initiated and created non-usage event independent of user initiated events is priceable; and

pricing, by the computer, the non-usage event responsive to the determining, where the pricing includes pricing the non-usage event independent of a billing process that includes a non-system-created event.

12. (PREVIOUSLY PRESENTED) A process as recited in claim 11, wherein priceable events are priced immediately.

13. (ORIGINAL) A process as recited in claim 11, wherein all charge events are priced in real-time.

14. (PREVIOUSLY PRESENTED) A computer implemented event pricing process, comprising:

determining, by a computer, whether an event is priceable; and

pricing, by the computer, the event responsive to the determining, wherein all available system initiated and created non-usage events independent of user initiated events for a current billing period are priced at a first opportunity after a prior billing period that includes non-system-created events ends.

15. (ORIGINAL) A process as recited in claim 11, wherein a usage event is priced at a time that the usage occurs.

16. (ORIGINAL) A process as recited in claim 11, wherein a recurring charge is calculated after an end of a prior billing period and before the billing date for the recurring charge.

17. (ORIGINAL) A process as recited in claim 11, wherein a minimum or a maximum charge is calculated and captured in a summary after an end of a prior billing period and before the billing date for the recurring charge.

18. (ORIGINAL) A process as recited in claim 11, wherein charges for summary events are calculated on-demand at a time of charge display.

19. (PREVIOUSLY PRESENTED) A computer implemented event pricing process, comprising:

determining, by a computer, whether a system initiated and created non-usage event independent of user initiated events is due to be created; and

creating, by the computer, the non-usage event responsive to the determining; and
pricing, by the computer, the non-usage event responsive to the creating, where the pricing includes pricing the non-usage event independent of a billing process that includes a non-system-created event.

20. (PREVIOUSLY PRESENTED) A process as recited in claim 19, wherein system initiated and created events are created independent of other processes.

21. (PREVIOUSLY PRESENTED) A process as recited in claim 19, wherein system initiated and created events are created according to a schedule in the system.

22. (ORIGINAL) A process as recited in claim 21, wherein said schedule is created and maintained by the system based on subscription information available in the system.

23. (ORIGINAL) A process as recited in claim 19, wherein a recurring event is created after an end of a prior billing period and before the billing date for the recurring charge.

24. (ORIGINAL) A process as recited in claim 19, wherein minimum and maximum charge summary events are created after an end of a prior billing period and before the billing date for the recurring charge.

25. (PREVIOUSLY PRESENTED) An event pricing system, comprising:
a computer having:
a continuously running event creation process determining whether a system initiated and created non-usage event independent of user initiated events has become current; and
a continuously running pricing process pricing the system-created non-usage events and non-system-created events as they become available to the system, and creating and maintaining summary events in real-time as events are priced, where the pricing process includes pricing the system-created non-usage events and/or the non-system-created events independent of a billing process.

26. (PREVIOUSLY PRESENTED) An event pricing system, comprising:
a computer having:
a continuously running event creation process determining whether a system initiated and created non-usage event independent of user initiated events is due to be created and creating system-created non-usage events at any time based on a flexible schedule; and
a continuously running pricing process, independent of a billing process, pricing of the system-created, non-usage and non-system-created events as ready for the billing process and for display as they become available to the system with all events priced as they become available to the system and creating summary events as events are being priced and performing real-time recalculation of a charge for any unbilled event when information in the system which impacts charge has changed.

27. (PREVIOUSLY PRESENTED) An event pricing apparatus, comprising:
a source of system initiated and created non-usage events independent of user initiated events; and
a processor pricing the non-usage events when the events are priceable, where the pricing includes pricing the non-usage event independent of a billing process that includes the user initiated events.

28. (PREVIOUSLY PRESENTED) A computer readable storage medium including an event pricing process controlling a computer and having a continuously running event creation process determining whether a system initiated and created non-usage event independent of user initiated events is due to be created, and a continuously running pricing process pricing the system-created non-usage events and non-system-created events as they become available to the system, where the pricing process includes pricing the system-created non-usage events and/or the non-system-created events independent of a billing process.

29. (PREVIOUSLY PRESENTED) A system providing pricing information for on-demand billing for events, comprising:

- a message queue receiving events including system initiated and created non-usage events and usage events; and

- a processor performing a pricing process where non-usage and usage events independent of user initiated events are continuously delivered to the pricing process via the message queue and priced as they become available independent of a billing process.

30. (PREVIOUSLY PRESENTED) A continuous pricing process for an event-driven system, comprising:

- storing events in a message queue, the events being system initiated and created non-usage events, usage events, one time events, and summary events;

- delivering the events in the message queue to a pricing process as they become available, the delivered events including events independent of user initiated events; and

- pricing the events, the pricing including pricing the non-usage events independent of a billing process that includes the user initiated events.

31. (PREVIOUSLY PRESENTED) An event pricing system, comprising:

- at least one computer having:

- a continuously running event creation process determining whether a system initiated and created non-usage event independent of user initiated events is due to be created and creating the non-usage event when due;

- a continuously running pricing process pricing the system-created non-usage events and non-system-created events including usage events as they become available to the system producing priced events, the pricing process including pricing the system-created non-usage events and/or the non-system-created events independent of a billing process; and

an intermittently running billing process running responsive to bill cycles and customer on demand billing information requests and producing a bill using the priced events.

32. (PREVIOUSLY PRESENTED) An event pricing process using a computer, comprising:

receiving system initiated and created non-usage events independent of user initiated events; and

pricing, by the computer, the system initiated and created non-usage events as soon as the events are received, where the pricing includes pricing the non-usage events independent of a billing process that includes the user initiated events.

33. (PREVIOUSLY PRESENTED) A method for a continuous real-time calculation of a bill using a computer, comprising:

executing the real-time calculation of the bill each time an event independent of a user's initiation occurs, the processing of the real-time calculation of the bill being independent of a billing process having an event responsive to the user's initiation; and

continuously reflecting the event independent of the user's initiation on the bill and maintaining a summary total for the bill, where the bill including the event independent of the user's initiation is displayed to the user on-demand and/or is provided to the user in accordance with the billing process.

34. (PREVIOUSLY PRESENTED) A method of continuous bill calculation using a computer, comprising:

determining whether a non-usage event independent of a user initiated event and a usage event initiated by a user are available for pricing; and

executing the pricing for the non-usage event and the usage event based on determination of availability for pricing, where the non-usage event is available for pricing at a first billing period and the usage event is available for pricing at a second billing period.